

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROSE F. SNYDER and DANNY RAY)	
JACK,)	NO. CV-07-0230-LRS
)	
Plaintiffs,)	
)	ORDER GRANTING DEFENDANTS'
-vs-)	MOTION FOR SUMMARY JUDGMENT
)	
PEND OREILLE COUNTY COUNSELING)	
SERVICES and PEND OREILLE)	
COUNTY,)	
)	
Defendants.)	
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)	

BEFORE THE COURT is Motion for Summary Judgment by Defendants Pend Oreille County Counseling Services and Pend Oreille County (Ct. Rec. 28).

I. PROCEDURAL BACKGROUND

On July 30, 2007, Plaintiffs, Rose Snyder and Danny Ray Jack, filed a Complaint alleging that they are disabled pursuant to 28 C.F.R. 35.104 and that their dog, Bucky, is a service animal as defined by R.C.W. 49.60.040 and WAC 162.26.040. Plaintiffs allege that Pend Oreille Counseling Center ("POCC") failed to reasonably accommodate their

1 disability pursuant to the Americans with Disabilities Act ("ADA"), 29
2 U.S.C. §794 and Washington's Law Against Discrimination ("WLAD").
3 Plaintiffs further allege that POCC negligently inflicted emotional
4 distress onto them by failing to provide the necessary counseling
5 services. (Complaint, ¶¶5.1-6.2).
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7 Defense completed depositions of Plaintiffs by May 7, 2008. On May
8 20, 2008, Plaintiffs' former counsel filed a Notice of Intent to
9 Withdraw. (Ct. Rec. 23). On June 2, 2008, the Court entered an Order
10 Granting Motion to Withdraw As Attorney. (Ct. Rec. 27). Discovery cutoff
11 was August 11, 2008. To date, no other legal counsel has entered a
12 Notice of Appearance and Plaintiffs are proceeding pro se. The
13 dispositive motion cutoff was August 18, 2008 pursuant to the Scheduling
14 Order (Ct. Rec. 13) entered on September 24, 2007.
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16 Defendants' Motion for Summary Judgment was timely filed August 18,
17 2008 and noted for hearing, without oral argument, on October 21, 2008.
18 Plaintiffs filed a response to the motion which was beyond the time
19 allowed by Rule 7.1(c). However, the Court's Order Granting Plaintiff's
20 Motion for Extension of Time to Submit Motion for Summary Judgment,
21 entered on October 14, 2008 (Ct. Rec. 45) extended Plaintiffs' time to
22 file a response and the response was considered timely for all purposes
23 hereunder.
24

25 Plaintiffs Memorandum in response to Defendants' Motion for Summary
26 Judgment does not comport to the rules of evidence, rules of civil
27 procedure, or local rules. In particular, Plaintiffs have failed to
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1 submit a statement of material facts pursuant to LR 56.1(b). The
2 failure to file a statement of material facts in opposition to
3 defendant's statement of material facts allows the court to assume the
4 facts as claimed by defendant are admitted to exist without controversy.
5 See Local Rule 56.1(d).
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7 **II. SUMMARY JUDGMENT STANDARD**

8 A Court will grant summary judgment where the documentary
9 evidence produced by the parties permits only one conclusion. *Anderson*
10 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The party seeking
11 summary judgment must show that no genuine issue of material fact exists
12 and that the Court should grant judgment as a matter of law. *Celotex*
13 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "A material issue of fact
14 is one that affects the outcome of the litigation and requires a trial
15 to resolve the parties' differing versions of the truth." *S.E.C. v.*
16 *Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982). The Court must
17 construe all facts and all justifiable inferences in favor of the non-
18 moving party. *Anderson*, 477 U.S. at 255.
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21 The party opposing summary judgment must go beyond the pleadings to
22 designate specific facts establishing a genuine issue for trial.
23 *Celotex*, 477 U.S. at 324; *Marks v. United States*, 578 F.2d 261, 263 (9th
24 Cir. 1978). The non-moving party may use affidavits, depositions,
25 answers to interrogatories, and admissions to do this. *Celotex*, 477 U.S.
26 at 323-24. The Court must enter summary judgment against a party who
27 fails to make a showing sufficient to establish an essential element of
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1 a claim, even if genuine factual disputes exist regarding other elements
2 of the claim. *Id.* At 322-23. No issue for trial exists unless
3 sufficient evidence favors the non-moving party for a jury to return a
4 verdict for that party. *Anderson*, 477 U.S. at 249. Thus, a scintilla
5 of evidence in support of the non-moving party's position will not
6 suffice. *Id.* at 252.

8 At the summary judgment stage the Court's function is not to weigh
9 the evidence or judge credibility. *Id.* at 249. Essentially the inquiry
10 is "whether the evidence presents a sufficient disagreement to require
11 submission to [a fact finder] or whether it is so one sided that one
12 party must prevail as a matter of law." *Id.* at 252.

14 **III. SUMMARY OF FACTS**

15 Ms. Snyder and Mr. Jack, residents of Pend Oreille County, are
16 disabled and collect benefits from the Social Security Administration and
17 the State of Washington. Ms. Snyder suffers from agoraphobia (an
18 abnormal fear of being in crowds, public places, or open areas), among
19 other mental disabilities. Mr. Jack suffers from physical disabilities
20 related to chronic pain. Plaintiffs are not employed.

22 Plaintiffs sought mental health treatment through POCC. They
23 attended at least two counseling sessions with a counselor and then,
24 identifying Bucky as a service animal, requested that Bucky be permitted
25 to attend the counseling sessions with them.

27 Based upon Plaintiffs' representation that Bucky was a service
28 animal, POCC permitted him to attend their sessions in the main office

1 in Newport, Washington. Eventually, this permission was withdrawn for
2 reasons¹ disputed by Plaintiffs. POCC, however, attempted to make
3 alternative arrangements for Plaintiffs' counseling sessions to
4 accommodate their requests that Bucky attend their sessions with them.

5 POCC attempted to accommodate Plaintiffs by flexing the start times
6 and offered other meeting areas. POCC offered sessions in Plaintiffs'
7 home. Plaintiffs refused all alternatives alleging that they were being
8 discriminated against. Plaintiffs stated reason for refusing these
9 alternatives was that it was not convenient. Plaintiffs subsequently
10 filed this lawsuit.
11

12 IV. DISCUSSION

13 A. ADA/WLAD Claims

14 Defendants argue that Plaintiffs fail to establish a claim pursuant
15 to the ADA or Washington Law Against Discrimination. For purposes of
16 this motion, Defendants do not dispute that Plaintiffs are disabled or
17 that Defendant Pend Oreille County is a public entity under the ADA.
18 Defendants do dispute that Bucky qualifies as a service animal under the
19 ADA. Finally, Defendants state that Plaintiffs have failed to meet all
20 three requirements for a violation to be established under Title II of
21 the ADA.
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24 In order to successfully state a claim under Title II of the ADA,
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26 ¹Defendants state that Bucky had frightened another client and they
27 did not feel that Bucky should return to the main office during normal
28 business hours, given their need to protect other clients.

1 a plaintiff must allege: 1) that he or she is a "qualified individual
2 with a disability;" 2) that he or she was "excluded from participation
3 in or denied the benefits of the services, programs, or activities of a
4 public entity" or otherwise "discriminated [against] by such entity;" 3)
5 by reason of such disability." 42 U.S.C. §12132. All three requirements
6 must be met, argue Defendants, before a violation will be established.
7 To prevail on their claims, Defendants assert, Plaintiffs must be able
8 to prove, by a preponderance of evidence, that they are qualified
9 individuals with a disability; that Bucky is a service animal and that
10 because Bucky could not attend POCC, they were denied services; and that
11 both Ms. Snyder and Mr. Jack require Bucky's assistance pursuant to the
12 ADA and that POCC discriminated against Plaintiffs as a result of their
13 disabilities. Defendants finally conclude that Plaintiffs must establish
14 that as a result of their disabilities, POCC violated their rights and
15 discriminated against them, and failed to offer any reasonable
16 accommodation.
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19 Relying on *Access Now, Inc. v. Town of Jasper*, 268 F.Supp.2d 973
20 (2003), Defendants contend that Bucky is a beloved pet to both Ms. Snyder
21 and Mr. Jack and provides no assistance to Plaintiffs outside of that
22 which one would expect from a pet. Although in their response Plaintiffs
23 spend a significant portion describing their various disabilities,
24 Defendants assert that the records indicate that Ms. Snyder has a mental
25 disability and Mr. Jack has a physical disability. Defendants do not
26 dispute that Bucky provides some assistance to Plaintiffs and that Bucky
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1 can have a calming effect on both of them. However, the services
2 provided by Bucky are nothing more than occasional services, mostly
3 provided outside of a place of public accommodation. Plaintiffs admit
4 that they share Bucky between the two of them and that they do not always
5 take Bucky with them. Defendants conclude, and the Court agrees, that
6 Bucky simply does not qualify as a service animal.
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8 Finally, Plaintiffs fail to present evidence to dispute that POCC
9 attempted reasonable accommodations to allow Bucky to be present at their
10 counseling sessions. Plaintiffs cannot refuse all alternative offers to
11 accommodate Bucky being present and then complain that POCC discriminated
12 against them as a result of their disabilities. The Court finds that
13 Plaintiffs' claims pursuant to the ADA must be dismissed.
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15 As to the WLAD claim, Washington courts turn to federal decisions
16 in interpreting Title VII to decide issues under WLAD. *Haubry v. Snow*,
17 106 Wn.App. 666, 674 (2001).

18 For the reasons discussed above with regard to the ADA claim, this
19 claim must also be dismissed.
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21 **B. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

22 Plaintiffs claim for Negligent Infliction of emotional distress
23 fails as a matter of law as there is no issue of fact that would
24 establish that they were denied any counseling services through the fault
25 of Defendants.

26 As with any negligence claim, this claim must withstand the required
27 showing of duty, breach, proximate cause, and damages or injury. See
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1 *Hunsley v. Giard*, 87 Wn.2d 424, 434 (1976).

2 Additionally, to survive summary judgment on a claim of negligent
3 infliction of emotional distress, a plaintiff must prove he or she has
4 suffered emotional distress by "objective symptomatology," and the
5 "emotional distress must be susceptible to medical diagnosis and proved
6 through medical evidence." *Hegel v. McMahon*, 136 Wash.2d 122, 135
7 (1998); see also *Hunsley v. Giard*, 87 Wash.2d 424 (Wash.1976). The
8 symptoms of emotional distress must also "constitute a diagnosable
9 emotional disorder." *Hegel*, 136 Wash.2d at 135; *Marzolf v. Stone*, 136
10 Wash.2d 122, 960 P.2d 424, 431 (1998).

11
12 In this instant case, Plaintiffs admit they denied alternative
13 treatment options, including home visits, and failed to make any further
14 efforts to obtain counseling services. There is no duty that POCC
15 breached. Plaintiffs also have failed to show the additional requirement
16 of objective symptomatology, proved with medical evidence. The claim for
17 negligent infliction of emotional distress must also be dismissed.
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19 **V. CONCLUSION**

20 Based upon the reasons and authorities cited above, **IT IS HEREBY**
21 **ORDERED** that:
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23 1. Defendants' Motion for Summary Judgment, Ct. Rec. 28, filed
24 August 18, 2008, is **GRANTED**, and judgment is entered in favor of
25 Defendants on all the claims.
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27 **IT IS SO ORDERED.** The District Executive is directed to enter
28 judgment accordingly, forward copies of the judgment and this order to

1 counsel, pro se Plaintiffs, and close this file.

2 **DATED** this 12th of December, 2008.

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4 *s/Lonny R. Suko*

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6 LONNY R. SUKO
7 United States District Judge
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